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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,198	06/24/2003	P. Michael Collins	MIK/06U	2217
26875 7590 03/07/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER A, PHI DIEU TRAN	
			ART UNIT 3637	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/07/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/602,198

Applicant(s)

MICHAEL COLLINS

Examiner

Phi D. A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6,7,9,12,15,16,18,25 and 27-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,9,12,15,16,18,25 and 27-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 3-4, 6-7, 9, 25, 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not disclose a jamb associated with the walls. Although the specification points to number 20 as jamb on page 5, number 20 indeed is showing the surface of the veneer/wall.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the jambs, sill, and overhead as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of

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the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 7, 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7 are indefinite as "an opening" is an empty space. An opening cannot have structure. It is the space between structures that form the opening, not vice versa.

Claim 39, "let" is misspelled.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12, 15, 18, 35 rejected under 35 U.S.C. 102(b) as being anticipated by Braun (5127204).

Braun shows a surround device comprising a first leg (10), a second leg (1a), a terminal end portion on the second leg of the surround device, at least one frangible joint connecting the terminal end portion (4) to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the first and second legs are perpendicular to each other, the first and second legs are of dissimilar materials bonded together, terminal end portion (4) being generally coplanar with the remainder of the second leg (1d).

3. Claims 12, 15, 35, 36 rejected under 35 U.S.C. 102(b) as being anticipated by Stanizzo (4272931).

Stanizzo (figure 2) shows a surround device comprising a first leg (the part with the tongue which inserts into the groove of part 3a), a second leg (the part immediately perpendicular thereof), a terminal end portion (13) on the second leg of the device, at least one frangible joint (per the slots 11) connecting the terminal end portion (13) to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the first and second legs are perpendicular to each other, terminal end portion (13) being generally coplanar with the remainder of the second leg, the second leg further comprising a plurality of frangible joints spaced from one another, each adapted to be severed to remove the terminal end portion of the second leg.

4. Claims 12, 15, 35, 36 rejected under 35 U.S.C. 102(b) as being anticipated by Shaw (4837991).

Shaw shows a surround device comprising a first leg (3), a second leg (the leg below section 9 which is next to leg 3, figure 2), a terminal end portion on the second leg of the surround device, at least one frangible joint connecting the terminal end portion (figure 2) to a

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remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg (the section next to leg 3), the first and second legs are perpendicular to each other, terminal end portion being generally coplanar with the remainder of the second leg, the second leg further comprising a plurality of frangible joints (9) spaced from one another, each adapted to be severed to remove the terminal end portion of the second leg.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braun (5127204) in view of Jentoft et al (4189877).

Braun shows all the claimed limitations except for the frangible joint comprising perforations in the second leg.

Jentoft et al discloses having perforations (40) forming a weakened section in the strip, the weakened section can also be formed by scoring.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Braun's structure to show the frangible joint comprising perforations in the second leg because perforations and scorings are well known equivalent means for forming a weakened section on a structure as taught by Jentoft et al.

7. Claims 1, 3-4, 6, 9, 12, 15, 25, 27-28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Stanizzo.

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Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (12) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end), a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the first and second legs being generally perpendicular to each other, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the first and second legs are of dissimilar materials bonded together, the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device .

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, a frangible connection joining the terminal end portion to a remainder of the second leg

Northrup Jr. discloses masonry units together with mortar.

Stanizzo discloses a frangible connection(11) joining the terminal end portion to a remainder of a second leg.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar as taught by Northrup Jr. because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving, and having a frangible connection joining the terminal end portion to a remainder of the second leg would allow for the easy modification of the member to form a proper fit to the surface as taught by Stanizzo.

8. Claims 1, 3, 4, 6, 25, 27-28, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Stanizzo (4272931).

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (12) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end), a bead (108) of caulk positioned in the recess and sealing the



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juncture between the frame and the second wall, the first and second legs being generally perpendicular to each other, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device, the terminal end portion being generally coplanar with the remainder of the second leg.

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint.

Northrup Jr. discloses masonry units together with mortar.

Stanizzo discloses a device having a first leg, a second leg having at least one frangible connection (11) connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint to allow for the breaking of the device to form proper fit.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar as taught by Northrup Jr., at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end

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portion is adapted to be removed along the frangible joint because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving, and having a second leg with frangible sections would allow for the second leg to compensate for different dimension/length requirement when attached to the surface to form proper fit as taught by Stanizzo.

9. Claims 7, 9, 16, 18, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851), Stanizzo, Trout (6993874) and Jentoft et al.

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (85) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16, 12) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end close to the part 108), a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame,

the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device, the first and second legs being of dissimilar materials bonded together, the first leg being mounted to the outer face of the first wall

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, one frangible connection connecting the terminal end portion to a remainder of the second leg, the terminal end portion is adapted to be removed along the frangible connection and thereby reveal a recess at a junction adjacent the frame, the remainder of the second leg and one of the jambs and the header of the opening, the second leg being a closed cell foam material and the frangible connection comprising perforations in the closed cell foam material.

Northrup Jr. discloses masonry units together with mortar.

Stanizzo discloses a device having a first leg, a second leg having at least one frangible connection connecting the terminal end portion to a remainder of the second leg to form a proper fit when attached to a surface.

Trout shows a surrounding device having a leg (12, 14) made of closed cell foam material to allow for the compensation of the expansion and contraction of the joint.

Jentoft et al discloses the use of perforation and scores being well known means for forming weakened areas on a strip.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar as taught by Northrup Jr., one frangible connection connecting the terminal end portion to a remainder of the second leg, the terminal end portion is adapted to

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be removed along the frangible connection as taught by Stanizzo and thereby reveal a recess at a junction adjacent the frame, the remainder of the second leg and one of the jambs and the header of the opening, the second leg being a closed cell foam material as taught by Trout and the frangible connection comprising perforations as taught by Jentoft et al in the closed cell foam material because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving, and having a second leg with frangible sections would allow for the second leg to compensate for different dimension/length requirement to form proper fit as taught by Stanizzo when attached to a surface, and having the device made of closed cell foam would allow the device compensate for the expansion and contraction at the joint as taught by Trout, and having perforations to form a weakened section on a structure would provide for the easy formation of a weakened area on a trim as perforations and scoring are well known means for forming weakened joints as taught by Jentoft et al.

10. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851), Stanizzo (4272931) as applied to claim 1 above and further in view of Jentoft et al.

Anastasi as modified shows all the claimed limitations except for the frangible joint comprising perforations in the second leg.

Jentoft et al discloses that perforations and scorings are well known means for forming a weakened area on structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's modified structure to show the frangible joint comprising perforations in the second leg because perforations and scoring would provide for the easy formation of a weakened area on a structure as taught by Jentoft et al.

11. Claims 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Stanizzo as applied to claim 1 or 31 above and further in view of Ting (5596851).

Anastasi as modified all the claimed limitations except for the second leg of each surround device being juxtaposed against and in contact with the second wall.

Ting (figure 3) shows a second of each surround device being juxtaposed against and in contact with the second wall (34).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's modified structure to show the second leg of each surround device being juxtaposed against and in contact with the second wall as taught by Ting because it would provide for proper attachment and sealing of the second leg to the second wall as taught by Ting.

#### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1, 3-4, 6-7, 9, 12, 15-16, 18, 25, 27-39 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different sealing device for windows and doors wall frame.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Phi Dieu Tran A

3/3/07